

Wal-Mart and its workers' compensation insurance carrier, National Union Fire Insurance (referred to jointly as "Wal-Mart" hereafter), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's award of benefits to Vincent Peralta, Jr. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Peralta claims workers' compensation benefits for a back injury that occurred while he was working for Wal-Mart on March 26, 1998. Mr. Peralta filed his application for hearing on March 8, 2002. Judge Hann held an evidentiary hearing on December 11, 2002, and then referred the medical aspects of the claim to a medical panel. The panel submitted its report on October 30, 2003. Judge Hann issued her decision on May 28, 2004, accepting the panel's opinion and awarded benefits. Wal-Mart then filed a timely motion for review of Judge Hann's decision.

In its motion for review, Wal-Mart contends that Mr. Peralta's expenses for medical care are subject to the Commission's medical fee regulations.

FINDINGS OF FACT

The underlying facts of Mr. Peralta's claim are not in dispute. The Appeals Board therefore adopts Judge Hann's findings of fact. In summary, Mr. Peralta injured his lumbar spine on March 26, 1998, while working as a truck driver for Wal-Mart. Since his accident, Mr. Peralta has undergone a wide range of medical treatments, including several instances of "radio frequency denervation," a procedure that used heat to cauterize pain-generating nerves.

DISCUSSION AND CONCLUSIONS OF LAW

Wal-Mart concedes its liability to pay workers' compensation benefits, including the reasonable cost of medical care necessary to treat Mr. Peralta's injuries. The only dispute is the extent to which Wal-Mart's liability is subject to the Commission's rules regulating medical expenses.

Section 34A-2-407(8) of the Utah Workers' Compensation Act requires health care providers, other than hospitals, to comply with the Labor Commission's rules and fee schedules when providing medical care to injured workers. The Commission has exercised its authority to regulate medical fees by promulgating Rule R612-2-5, "Regulation of Medical Practitioner Fees," which in turn incorporates by reference the National Health Care Financing Administration's "Resource Based Relative Value Scale" (RBRVS), 2003 edition.

In this case, Judge Hann ordered Wal-Mart to pay for Mr. Peralta's future medical treatment according to the Commission's fee schedules. However, with respect to the medical treatment Mr. Peralta has already received, Judge Hann made no reference to the fee schedules. Wal-Mart argues

that its obligation to pay Mr. Peralta's medical expenses, both for care already received and for the care to be received in the future, are governed by Commission fee schedules. The Appeals Board agrees with Wal-Mart's contention and will amend Judge Hann's order accordingly.

The Appeals Board notes Wal-Mart's additional argument that the Commission's medical fee schedules provide no fee for several medical procedures, including thermo-rhizotomy, that are investigational and without proven medical benefit. Wal-Mart maintains that because the "radio frequency denervation" procedures Mr. Peralta received are a type of thermo-rhizotomy, the fee schedules do not require payment for those procedures.

Mr. Peralta responds by suggesting that radio frequency denervation is something different than thermo-rhizotomy. This suggestion is incorrect. Thermo-rhizotomy refers to the use of heat to interrupt spinal nerve roots. See *Dorland's Illustrated Medical Dictionary*, 27th Ed. Radio frequency denervation de-activates the nerve by applying electric current to cauterize it. In other words, radio frequency denervation is a particular method for accomplishing thermal rhizotomy. The Appeals Board therefore concludes that radio frequency denervation is a type of thermo-rhizotomy and is not subject to payment under the Commission's medical fee schedules.

ORDER

The Appeals Board grants Wal-Mart's motion for review and amends Judge Hann's order as follows:

It is hereby ordered that Wal-Mart and National Union Fire Insurance pay, in accordance with the Commission's rules and RBRVS standards, the expense of covered medical treatment for low back injury received by Mr. Peralta after December 31, 1999, plus interest thereon at 8% per annum.

It is further ordered that Wal-Mart and National Union Fire Insurance pay, in accordance with the Commission's rules and RBRVS standards, the expense of Mr. Peralta's on-going covered medical treatment for his low back injury.

Dated this 31st day of March, 2005.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch